

**GREENWOOD COMMON COUNCIL**

**ORDINANCE NO. 06-03**

**AN ORDINANCE AMENDING GREENWOOD MUNICIPAL CODE (1993), AS  
AMENDED, CHAPTER 6, "SAFETY DEPARTMENTS AND REGULATIONS", ARTICLE  
10, "SPECIFIC ACTIVITIES REGULATED FOR THE PUBLIC'S HEALTH AND  
SAFETY", TO ADD A NEW SECTION TO ADOPT REGULATIONS PROHIBITING  
SMOKING IN CERTAIN PUBLIC PLACES AND PLACES OF EMPLOYMENT**

WHEREAS, I.C. 36-8-2-4 authorizes municipalities to regulate conduct that may endanger the public health, safety, or welfare; and

WHEREAS, it has been determined that numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand tobacco smoke is a cause of diseases such as heart disease, stroke, respiratory disease, and lung cancer in healthy nonsmokers; is particularly hazardous to the elderly and individuals with certain diseases; and increases the risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer in children; and

WHEREAS, a significant amount of secondhand smoke exposure occurs in the workplace and contributes to employee illness, absenteeism, decreased productivity, increased cleaning and maintenance costs, and increased health care costs; and

WHEREAS, it has been shown that secondhand smoke cannot be reduced to safe levels through air cleaners and ventilations systems; and

WHEREAS, it is determined that is in the best interest of the public health, safety and welfare to regulate smoking activity in the City of Greenwood, while balancing the needs and desires of businesses, employers, smokers and non-smokers; and

WHEREAS, the Common Council hereby finds and declares that the purposes of this Ordinance are: 1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and 2) to promote the ability of nonsmokers to breathe smoke-free air and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke,

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF GREENWOOD, INDIANA, THAT:

Section 1. Section 6-349, "Smoking Regulations", is hereby adopted and added to the Greenwood Municipal Code (1993), as amended, Chapter 6, "Safety Departments and Regulations", Article 10, "Specific Activities Regulated for the Public's Health and Safety", to read as follows:

**"Sec. 6-349 Purpose**

The purpose of this Section is to protect the public health and welfare by prohibiting smoking in public places and places of employment; and to guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

**(a) Definitions**

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

1. "Attached Bar" means the bar area of a restaurant.
2. "Bar" means an establishment that serves alcoholic beverages for consumption on the premises, by guests who must be at least twenty-one

(21) years of age to enter the premises, including but not limited to pubs, taverns, nightclubs, cocktail lounges, and cabarets

3. “Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
4. “Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
5. “Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust or non-profit entity that employs the services of one or more individual persons.
6. “Enclosed Area” means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways) which extend from the floor to the ceiling.
7. “Health Care Facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
8. “Place of Employment” means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, breakrooms, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles owned by the City of Greenwood. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.
9. “Private Club” means a facility:
  - (a) owned or operated by an association or corporation which shall:
    - (i) not be operated for pecuniary gain; and
    - (ii) consist of membership:
      - (A) formed as a lodge, local chapter, or corresponding unit of a fraternal order whether or not recognized on a national basis; or
      - (B) comprised of persons who have served in the armed forces of the United States; or
      - (C) formed as a recognized, exclusive association of persons organized for a joint or common purpose for which application for membership, the payment of dues, and self governance by the membership are distinguishing characteristics; and
  - (b) where entry into, and use of the facility, is restricted to members and guests of members

10. “Private Function” means a gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement, or dining, where membership or specific invitation is a prerequisite to entry and where the event is not intended to be open to the public.
11. “Public Place” means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health care facilities, Laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sport arenas, theaters, and waiting rooms. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.
12. “Restaurant” means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include an attached bar.
13. “Retail Tobacco Store” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
14. “Service Line” means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
15. “Shopping Mall” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
16. “Smoking” means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.
17. “Sports Arena” means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

**(b) Application to City-Owned Facilities**

All enclosed facilities owned, leased, or operated by the City of Greenwood shall be subject to the provisions of this Section, including City vehicles, whether or not they are occupied by more than one person.

**(c) Prohibition of Smoking in Public Places**

Smoking shall be prohibited in the following enclosed public places and other public places similarly situated within the City of Greenwood, including but not limited to the following places:

1. Aquariums, galleries, libraries, and museums.
2. Arcas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, Laundromats, hotels and motels.

3. Bingo facilities when a bingo game is in progress.
4. Convention facilities.
5. Elevators.
6. Facilities primarily used for exhibiting motion picture, stage, drama, lecture, musical recital, or other similar performance, except when smoking is part of a theatrical production.
7. Health care facilities.
8. Licensed child care and adult day care facilities.
9. Lobbies, hallways, and other common areas in apartment building, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
10. The following outdoor areas:
  - (i) Smoking is limited to 25% of seating in outdoor dining areas of restaurants and bars,
  - (ii) Within courtyards, and other areas where air circulation may be impeded by architectural, landscaping or other barriers.
11. Places of employment.
12. Private Functions in other public places likes bars, restaurants, hotels, and motels.
13. Polling Places.
14. Public transportation facilities, including buses and taxicabs, under the authority of the City of Greenwood, and ticket, boarding, and waiting areas of public transit depots.
15. Restaurants, including attached bars.
16. Restrooms, lobbies, reception areas, hallways, and other Common-use areas.
17. Rooms, chambers, places of meeting or public assembly, including school buildings under the control of an agency, board, commission, committee or council of the City of Greenwood or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the City of Greenwood.
18. Service Lines.
19. Sports arenas, including enclosed places in outdoor arenas.

**(d) Prohibition of Smoking in Places of Employment**

1. Smoking shall be prohibited in all enclosed places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private

offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities

2. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Section and to all prospective employees upon their application for employment

**(e) Reasonable Distance**

Smoking is prohibited within a reasonable distance of 25 feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means.

**(f) Exemptions from Regulation**

Notwithstanding any other provision of this Section to the contrary, the following areas shall be exempt from the provisions of Subsections (c), (d) and (e):

1. Bars other than attached bars.
2. Private residences, except when used as a licensed child care, adult day care, or health care facility.
3. Hotel and motel rooms that are rented to guests and are designated as smoking rooms;; provided, however, that no more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated.
4. Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Section.
5. Private Club meeting halls, clubhouses, structural facilities and club property when these places are being used for private functions of the private club and its members; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Section.
6. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted.
7. outdoor areas of places of employment except those covered by the provisions of Subsection (c).

**(g) Declaration of Establishment as Nonsmoking**

Notwithstanding any other provision of this Section, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Subsection (i)(1) is posted.

**(h) Policies Regarding Smoking in Places of Employment**

1. It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers are not required to

incur any expense to make structural or other physical modifications.

2. The smoking policy shall be communicated to all employees.
3. Each employer having an enclosed place of employment located within the City shall adopt, implement, make known and maintain a written smoking policy, which shall contain the following elements:
  - (i) Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities. Smoking shall be prohibited in all vehicles owned by the City of Greenwood.
  - (ii). All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

**(i) Posting of Signs**

1. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Section, by the owner, operator, manager, or other person in control of that place.
2. Every public place and place of employment where smoking is prohibited by this Section shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
3. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Section by the owner, operator, manager, or other person having control of the area.
4. Any public place or place of employment exempted from this chapter shall clearly and conspicuously post the following sign at every entrance: "Warning: Tobacco Smoke May Be Present".

**(j) Retaliation Prohibited**

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, patron or customer because that employee, applicant, patron or customer exercises any rights afforded by this Section or reports or attempts to prosecute a violation of this Section.

**(k) Enforcement**

1. The City shall seek to gain voluntary compliance with this chapter by means of publicity and education programs, and the issuance of warnings, where appropriate.
2. The Greenwood City Court shall be the court of proper venue and jurisdiction for the enforcement of this Section.

3. Warnings and Citations for violation of this Section shall be issued by any sworn member of the Greenwood Police Department, sworn members of the Greenwood Fire Department as designated by the Greenwood Fire Chief, Greenwood Code Enforcement personnel, and additionally, in or on Greenwood Community Schools Property, Clark-Pleasant Community Schools property, or Center Grove Community School Corporation property, by any special police officer appointed under I.C. 36-8-3-7 to serve the Greenwood Community School, Clark-Pleasant Community School, or Center Grove Community School Corporations.
4. Any citizen who desires to register a complaint under this Section may initiate enforcement with the Greenwood Police Department.
5. Upon determining that any provision of this Section has been violated, the enforcement officer may issue a warning or may issue a Citation to the person(s) responsible for the violation. The Citation shall be in writing and shall be served upon the person(s) responsible for the violation by any of the following methods: delivery in person, certified mail, or first class mail. The Citation shall state:
  - (i) The location of the violation;
  - (ii) The nature of the violation;
  - (iii) The fine assessed for the violation;
  - (iv) The location where the fine may be paid (either the Clerk-Treasurer's Office for fines under the jurisdiction of the Ordinance Violations Bureau or the Greenwood City Court for fines under the jurisdiction of the Greenwood City Court);
  - (v) That the fine may be contested in the Greenwood City Court.

**(l) Violations and Penalties**

1. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions.
2. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to knowingly or willfully allow smoking to occur where prohibited by this Section. It is a defense to this Section, if the foregoing persons or their employees act in a reasonable and timely manner to personally inform the violator of the prohibition and request that he or she refrain from smoking.
3. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Section.
4. A person who:
  - (i) smokes in an area where smoking is prohibited by the provisions of this Section shall be guilty of an infraction, punishable by a fine of Fifty Dollars (\$50);
  - (ii) owns, manages, operates, or otherwise controls a public place of employment and who fails to comply with the

provisions of this Section shall be guilty of an infraction punishable by:

- (A) A fine of Fifty Dollars (\$50) for the first violation;
  - (B) A fine of One Hundred Dollars (\$100) for the second violation at the same place;
  - (C) A fine of Two Hundred Fifty Dollars (\$250) for the third violation at the same place.
- 5. Each day on which a violation of this Section occurs shall be considered a separate and distinct violation.
  - 6. Penalties of \$50 and \$100 shall be processed through the Ordinance Violations Bureau; penalties exceeding \$100 shall be processed through the Greenwood City Court, in accordance with I.C. 33-36-2-3.
  - 7. If, after multiple violations by the same person or at the same business, the Greenwood City Attorney and the Greenwood Police Department have reasons to believe that the imposition of fines will not be effective in enforcing this chapter, the City Legal Department shall be empowered to seek any other remedies provided by law.

**(m) Public Education**

The City of Greenwood may engage in a continuing program to explain and clarify the purposes and requirements of this Section to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

**(n) Governmental Agency Cooperation**

The Mayor, on behalf of the Board of Public Works and Safety, may annually request other governmental and educational agencies having facilities within the City of Greenwood to establish local operating procedures in cooperation and compliance with this Section. This includes urging all Federal, State, County, and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

**(o) Other Applicable Laws**

This Section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**(p) Severability**

If any subsection, sentence or provision of this Section, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this Section which can be given effect without the invalid provision or application, and to this end the provisions of this Section are declared to be severable.

Section 2. The sections, paragraphs, sentences, clauses, phrases and words of this Ordinance are separable, and if any word, phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional, invalid or unenforceable by the valid judgment or



decree of a Court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs and sections of this Ordinance.

Section 3. This Ordinance shall be in full force and effect upon its passage, approval and publication according to law; however, there shall be a Sixty (60) day phase-in period for all public places and places of employment.

Passed by the Common Council of the City of Greenwood, Indiana, this 20th day of February, 2006.

Ronald Bates  
Ronald Bates, President  
Greenwood Common Council

FOR:

Ronald Bates  
Jessie E. Reed  
Wm. Bless  
SA  
[Signature]

AGAINST:

Ronald Bates  
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ATTEST:

Jeannine Myers  
Jeannine Myers, Clerk-Treasurer

The foregoing within and attached Ordinance passed by the Common Council of the City of Greenwood, Indiana, on the 20th day of February, 2006, is presented by me this 20th day of February, 2006, at 10:00 O'Clock A.M., to the Mayor of the City of Greenwood, Indiana.

Jeannine Myers  
Jeannine Myers, Clerk-Treasurer

The foregoing within and attached Ordinance passed by the Common Council of the City of Greenwood, Indiana, on the 20th day of February, 2006, is signed and approved by me this 15 day of March, 2006, at 10:45 O'Clock A.M.

Charles E. Henderson  
CHARLES E. HENDERSON, Mayor of  
the City of Greenwood, Indiana